Bachus in the Washington Times: â€˜Watch Fed initiativesâ€™

Before creating new bottlenecks legislatively

By Spencer Bachus | Tuesday, April 28, 2009

- "Now is not the time to limit choices, raise costs, disrupt the secondary mortgage market, and look the other way on fundamental GSE reform"

There are serious questions about the mortgage legislation to be considered by the Financial Services Committee this week. These concerns must be addressed before this sweeping legislation - which would further limit options for homebuyers and could freeze an already chilled mortgage market - is advanced.

The Federal Reserve, Treasury and Federal Deposit Insurance Corp. have invested billions of tax dollars in an effort to jump-start the ailing housing market and mitigate home foreclosures, so this is hardly the right time to pass legislation that makes this massive taxpayer investment less likely to succeed.

Some argue that the Democrats' mortgage reform legislation is needed to prevent bad actors from engaging in predatory lending practices. What they fail to recognize, though, is that Congress and the Federal Reserve already have acted. Last year, the Fed issued comprehensive rules that incorporated many of the provisions included in the bipartisan subprime legislation that I supported last Congress. In fact, Rep. Barney Frank, Massachusetts Democrat and chairman of the Financial Services Committee, has said flatly that the Fed's rules "will make it impossible to get those subprime loans." And just last week, the Fed told our panel that these protections are being implemented.

Moreover, Congress also has already approved legislation that I wrote to create a national licensing and registration system for mortgage originators. This system, which the Massachusetts Banking Commissioner described as "truly the most extraordinary and significant development in the area of mortgage supervision" in his 20-year career, will result in greater accountability for mortgage originators.

Before Congress rushes to pass mortgage reform legislation, we should let these rules take effect.

The last Congress' action was the product of good-faith, inclusive negotiations. Those negotiations yielded balanced legislation to combat abusive lending practices while not disrupting the flow of mortgages to creditworthy borrowers. Unfortunately, Mr. Frank chose not to include Republicans in the drafting of his new mortgage bill. To claim that this Democrat-written mortgage bill is the bipartisan bill that I and other Republicans supported in the last Congress is wrong and is only another attempt by Mr. Frank to avoid addressing the serious policy concerns raised by critics of his far-reaching legislation.

It's also clear that Mr. Frank isn't interested in seeking a bipartisan compromise, namely because Republicans would have insisted on including reforms to Fannie Mae and Freddie Mac. It's widely acknowledged that Fannie and Freddie, the two Government sponsored enterprise (GSE) mortgage giants, paved the way for the current economic crisis. However, this Democrat-written bill doesn't even mention these entities.

Mr. Frank's bill would offer certain critical liability protections only to 30-year fixed-rate loans that meet certain criteria, thereby exposing to litigation risk - and substantially increasing the costs of - all other mortgages, including Federal Housing Administration, Department of Veterans Affairs, and Rural Housing Service loans as well as loans modified under President Obama's foreclosure mitigation plan.

Mr. Frank's bill encourages excessive litigation. It includes $140 million to fund "legal assistance for foreclosure-related issues." With no taxpayer safeguards, this is nothing more than a trial lawyer set-aside. American taxpayers should not be asked subsidize litigation.

Mr. Frank's bill would require market participants to retain at least a 5 percent economic interest on each loan that does not qualify for liability protection. While the concept of originators retaining "skin in the game" is one that most support, the mechanics of how this new provision would work are unspecified. The same Democratic majority that brought America Hope for Homeowners - a failed government initiative aiming at assisting 400,000 homeowners but which has only helped a few dozen with a price tag of tens of millions of tax dollars - now promises to fix the securitization market with a similarly untested and ill-defined plan.

This form of risk retention may drive many reputable nonbank lenders out of business, reducing consumer choices and further increasing overall mortgage costs.

Now is not the time to limit choices, raise costs, disrupt the secondary mortgage market, and look the other way on fundamental GSE reform. This is the basis for my opposition to this bill. It's my hope, though, that the chairman will work with Republicans to seek a bipartisan compromise, similar to the one that was reached last year.

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